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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,375	12/25/2006	Lorrain Sausse	930-99-002 01 USA	3526

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EXAMINER

DUFF, DOUGLAS J

ART UNIT

PAPER NUMBER

3748

NOTIFICATION DATE

DELIVERY MODE

06/24/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/540,375	<b>Applicant(s)</b> SAUSSE ET AL.	
	<b>Examiner</b> DOUGLAS J. DUFF	<b>Art Unit</b> 3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8,9 and 11 is/are rejected.
- 7) ☒ Claim(s) 7 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

Art Unit: 3748

This Office Action is in response to Applicant's amendment filed 3/24/10.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 6, 8, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Swearingen (US 4300869). Swearingen discloses a turbocharger comprising a center housing (outside 30), a variable nozzle device, and an exhaust housing (12) being mechanically and/or thermally decoupled from the variable nozzle device (at 46), wherein the variable nozzle device comprises a circumferential arrangement of vanes (40) interposed between a nozzle ring (36) and an outer ring (46) integrally formed with a peripheral ring (46 near 26) fitted on said nozzle ring and coupled to said center housing (via 36), wherein the peripheral ring is radially and axially spaced from the exhaust housing (left of 46), so that any contact between the exhaust housing and the peripheral ring is avoided at all locations wherein said exhaust housing is mounted directly to a center housing (outside 30 at 12) carrying a shaft with a turbine wheel, so that both housings define an inner space in which said variable nozzle device and said turbine wheel are located (Fig. 1), wherein said exhaust housing comprises a gas inlet portion (at 60) attached to said center housing and a gas outlet portion (16) encompassing with an axially extending clearance a gas outlet portion of

Art Unit: 3748

the variable nozzle device (at 46), further comprising a sealing system for avoiding a gas leakage between the exhaust housing and the variable nozzle device (at 46), wherein said vanes are pivotally supported on the nozzle ring (36), said nozzle ring being axially urged by the peripheral ring against an annular disc member supported on said center housing (right of 50), wherein said gas inlet portion of the exhaust housing encompasses with a further axially extending clearance (outside of 46) the peripheral ring of said variable nozzle device, further comprising an insert (38, 46, 60) comprising the peripheral ring and an outer ring (38).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swearingen. Swearingen discloses the turbocharger of claim 4, wherein the gas inlet portion of the exhaust housing comprises a flange member axially abutted to the center housing and mounted thereto by a fastening member (outside 30 at 12). Swearingen does not show the flange member axially abutting the housing via sealing element. It would have been obvious for a person having ordinary skill in the art at the time the invention was made to utilize a sealing element between the flange and housing in order to prevent high pressure exhaust gas, found near 42, to leak past the housing.

***Allowable Subject Matter***

5. Claims 7 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1 and 3-11 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3748

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS J. DUFF whose telephone number is (571)272-3459. The examiner can normally be reached on M-Th 7 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Denion can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas E. Denion/  
Supervisory Patent Examiner, Art Unit 3748

/Douglas J Duff/  
Examiner, Art Unit 3748  
6/18/10